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No. 85-1553

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,
Petitioner,

v.

CITY OF CLEARWATER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this case is ripe for decision when there are virtually no record facts, and no findings, on crucial issues, and neither petitioner nor any other person is threatened with imminent harm.

TABLE OF CONTENTS

	Page
STATEMENT	1
I. INTRODUCTION	1
II. THE BACKGROUND OF THE CASE	2
A. The Nature And Purpose Of The Ordinance	2
B. Events And Practices Leading To The Ordinance	2
C. The Provisions Of The Clearwater Ordinance	4
D. The Procedural History Of The Case In The District Court	6
E. The Decision Of The Eleventh Circuit	9
F. The Non Enforcement Of The Ordinance, And The Consequent Lack Of Any Threat Of Imminent Harm To Any Person	10
REASONS FOR DENYING THE WRIT	12
I. The Case Is Not Ripe For Decision	12
II. The Clearwater Ordinance Comports With Decisions Of This Court	17
A. Government Can Prohibit And Punish Crime And Antisocial Conduct Even When Committed In The Name Of Religion	17
B. It Is Erroneous To Argue That Crime And Antisocial Conduct Are Immune From Regulation Because Government Lacks Power To Affect The Relationship Between A Church And Its Members Or To Require Information From Hierarchical Religions	20
III. The Ordinance Does Not Require Unusual Amounts Of Information. Also, It Is Not Vague Or Overbroad And Does Not Repose Arbitrary Power In City Officials	22
CONCLUSION	24
APPENDIX	

TABLE OF AUTHORITIES

Cases: Page

Alamo Foundation, et al. v. Secretary of Labor, —— U.S. ——, 103 S.Ct. 1953 (1985) 13, 14
American Communications Association v. Douds, 339 U.S. 382 (1950) 23
Bender, et al. v. Williamsport Area School District, et al., No. 84-773, decided March 25, 1986, 54 L.W. 4307 ..... 15, 16
Bigelow v. Virginia, 421 U.S. 809 (1975) 17
Blanchette v. Connecticut General Insurance Corps., 419 U.S. 102 (1974) 12, 13, 14, 15
Bob Jones University v. United States, 461 U.S. 574 (1983) 18
Broadrick v. Oklahoma, 413 U.S. 601 (1973) 17
Cantwell v. Connecticut, 310 U.S. 296 (1940) 19
Church of Scientology Flag Service Orig. Inc., et al., v. City of Clearwater, et al., 777 F.2d 598 (11th Cir. 1985) ..... *passim*
Davis v. Beason, 133 U.S. 333 (1890) 18, 21
Doremus v. Board of Education, 342 U.S. 394 (1952) 14, 15
Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59 (1978) 13
Gooding v. Wilson, 405 U.S. 518 (1972) 17
Grayned v. City of Rockford, 408 U.S. 104 (1972) .. 17
Grosz v. City of Miami Beach, 721 F.2d 729 (11th Cir. 1983), *cert. den.*, —— U.S. ——, 105 S.Ct. 108 (1984) 19
Harden v. State, 216 S.E.2d 708 (Tenn. 1948) 18, 19
Hynes v. Mayor and Council of Borough of Oradell, 425 U.S. 610 (1976) 19
International Society for Krishna Consciousness v. Barber, 650 F.2d 430 (2d Cir. 1981) 19
International Society for Krishna Consciousness v. City of Houston, 689 F.2d 541 (5th Cir. 1982) .. 5, 12, 20, 23
Juidice v. Vail, 430 U.S. 327 (1977) 14
Kolender v. Lawson, 461 U.S. 352 (1983) 17, 23
Kremens v. Bartley, 431 U.S. 119 (1977) 14

TABLE OF AUTHORITIES—Continued

Page

Lakewood, Ohio Cong. of Jehovah's Witnesses, Inc. v. City of Lakewood, 699 F.2d 303 (6th Cir. 1983), *cert. den.*, —— U.S. ——, 104 S.Ct. 72 (1983) 19
Larson v. Valente, 456 U.S. 228 (1982) 15, 17, 19
Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent, —— U.S. ——, 104 S.Ct. 2118 (1984) 17
People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903) 18
Poe v. Ullman, 367 U.S. 500 (1961) 13
Prince v. Massachusetts, 321 U.S. 158 (1944) 18
Rescue Army v. Municipal Court, 331 U.S. 549 (1947) 13
Reynolds v. United States, 98 U.S. 145 (1878) 18, 21
Sanks v. Georgia, 401 U.S. 144 (1971) 13
Secretary of State of Maryland v. Joseph H. Munson Co., —— U.S. ——, 104 S.Ct. 2839 (1984) ..2, 14, 19
Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich, 426 U.S. 696 (1976) 21
State v. Bullard, 148 S.E.2d 565 (N.C. 1966), *cert. den.*, 386 U.S. 917 (1967) 18
United States v. Coates, 692 F.2d 629 (9th Cir. 1982) 23
United States v. Dykema, 666 F.2d 1096 (7th Cir. 1981), *cert. den.*, 456 U.S. 983 (1982) 23
United States v. The Freedom Church, 613 F.2d 316 (1st Cir. 1979) 23
United States v. Kissinger, 250 F.2d 940 (3d Cir. 1958), *cert. den.*, 356 U.S. 956 (1958) 19
United States v. Kuch, 288 F.Supp. 439 (D.D.C. 1968) 18
United States v. Lee, 455 U.S. 252 (1982) 18
United States v. Moon, 718 F.2d 1210 (2d Cir. 1983), *cert. den.*, —— U.S. ——, 104 S.Ct. 2344 (1984) 18
United States v. Rasheed, 663 F.2d 843 (9th Cir. 1981), *cert. den.*, 454 U.S. 1157 (1982) 19

TABLE OF AUTHORITIES—Continued

	Page
United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973)	17
Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)	17
Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980)	2, 19
Wisconsin v. Yoder, 406 U.S. 205 (1972)	18
Constitution:	
First Amendment	*passim*
Ordinances and Statutes:	
Clearwater Ordinance No. 3091-83	*passim*
Clearwater Ordinance No. 3479-84	*passim*
Ark. Stat. Ann. §§ 64-1602, 64-1603	22
Conn. Gen. Stat. Ann. § 21a-177 (West. Supp. 1983)	22
Ga. Code Ann. §§ 43-17-2, 43-17-4	22
Haw. Rev. Stat. § 467B-2	22
Ill. Ann. Stat. Ch. 23, §§ 5102, 5104 (Smith-Hurd)	22
Kan. Stat. §§ 17-1740, 17-1742	22
Me. Rev. Stat. tit. 9, §§ 5004, 5005	22
Md. Ann. Code Art. 41, § 103B	22
Mass. Ann. Laws, Ch. 68, § 19 (Michie/Law Co-op)	22
Mich. Comp. Laws Ann. §§ 400.273, 400.274	22
Minn. Stat. Ann. §§ 309.52, 309.53	22
N.C. Gen. Stat. § 131C-7	22
N.D. Cent. Code §§ 50-22-03, 50-22-04	22
N.J. Stat. Ann. §§ 45:17A-4, 17A-6 (West)	23
N.Y. Exec. Law §§ 172, 172-b (McKinney)	23
Ohio Rev. Code Ann. §§ 1716.02, 1716.04 (Page)	23
Okla. Stat. Ann. tit. 18, §§ 552.3, 552.5 (West)	22
Pa. Stat. Ann. tit. 10, § 160-3 (Purdon)	22
R.I. Gen. Laws § 5-53-2 (Supp. 1984)	22
Va. Code § 57-49	22
W.Va. Code § 29-19-5	23
26 U.S.C. § 6033(a)(1)	22

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STATEMENT

I. INTRODUCTION

Respondents urge that the petition for certiorari be denied. In its present posture this case presents no question of national importance, no conflict among the circuits, and no error of law. Nor is there any threat of imminent harm to petitioners or any other person; by virtue of injunctions and the decisions of city officials, the challenged ordinance has never been and will not be enforced pending an appropriate decision in the trial court. Thus, currently the litigation presents only a correct appellate holding that the case is not ripe for decision because of the nearly total lack of a factual record and the lack of factual findings by the trial court. As discussed *infra*, this Court itself has made clear that a case is not ripe in such circumstances.

II. THE BACKGROUND OF THE CASE

A. The Nature And Purpose Of The Ordinance

This case involves a lengthily considered, carefully drafted ordinance enacted in response to a major problem facing Clearwater, Florida. The ordinance is a registration and disclosure law that requires all charitable groups, or organizations holding themselves out as charitable groups, to register and disclose pertinent information when soliciting funds in Clearwater. Sections 100.01, 100.03, Appendix To The Petition For A Writ Of Certiorari (hereafter "Pet. App."), J6-J8, J20-J27. Religious organizations are among the charitable groups encompassed by the ordinance. Sections 100.01(1), 100.01 (3), Pet. App. J6-J7, J8-J9.

The ordinance was enacted because of revelations of a host of serious crimes and abuses committed by a group operating in Clearwater. As a disclosure law, the ordinance was adopted to prevent fraud and to enable people to make an informed decision when determining whether to contribute money to soliciting organizations. This Court, of course, has said twice in the last six years that penal and disclosure laws can be used to stop fraud by eleemosynary organizations. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637-638 (1980); *Secretary of State of Maryland v. Joseph H. Munson Co.*, —— U.S. ——, —— n.9, 104 S.Ct. 2839, 2850 n.9 (1984).

B. Events And Practices Leading To The Ordinance [1]

In 1975 the "Church" of Scientology made Clearwater one of its major worldwide bases. The "Church" then

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[1] As previously stated, the district court took almost no evidence and made no findings of fact. Necessarily, therefore, other sources provide the information set forth in this brief regarding events that led to the ordinance, practices of the "Church" of Scientology, and Clearwater's reasons for the ordinance. The other sources are the nearly fifteen hundred pages of transcript of legislative hearings held by the Clearwater City Commission, numerous judicial deci-

began bringing people to Clearwater from all over the world to take Scientology "training" and tens of millions of dollars per year in Scientology income began originating in Clearwater.

Scientology claims its "training" will cure mental and physical illnesses and enable individuals to achieve great heights of success. It promotes these claims in commercial literature and advertisements. In the main, the "training" consists of a process called auditing, in which the individual is hooked-up to a form of lie detector called an E-Meter. While attached to the E-Meter, the individual is asked all manner of questions by an interrogator, including questions about the most intimate and confidential details of life. The interrogators often are young and inexperienced persons with no training other than having been audited themselves for a short period of time. The charge for the "training" often runs between $5,000 and $80,000.

After the "Church" made Clearwater a major base, City officials began receiving complaints of illicit and questionable actions. There were complaints of fraud stemming from the failure of Scientology "training" to provide the promised benefits and from failure to give promised refunds. There were reports of spying upon reporters and officials. It was learned that Scientology had a cache of weapons in the Clearwater area, and that officials of Scientology had been convicted and imprisoned for serious crimes against the United States.

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sions of courts in this country and abroad, executive and legislative reports, and personal knowledge of Clearwater officials.

The transcript of the Clearwater hearings, the judicial decisions, and the legislative and executive reports were submitted to the court of appeals in an appendix. Such materials, plus the testimony of Clearwater officials, will be included in the evidence submitted at future evidentiary hearings in the district court.

A list of the judicial decisions which provide information is contained in the Appendix to this brief.

The situation became sufficiently serious that in May, 1982, the City Commission held extensive legislative hearings that took five days, cover nearly 1,500 pages of transcript, and were videotaped. There were sixteen witnesses, including experts on Scientology and thirteen former Scientologists, some of whom had held high positions in the "Church." There were sixty-one exhibits, a large number of which were documents from "Church" files detailing its regular policies and practices.

The hearings disclosed a staggering array of criminal and abusive acts, practices and policies of the "Church." The acts included burglarizing and bugging offices to obtain documents and information for use against critics, "framing" opponents by manufacturing and planting false evidence, blackmailing persons who left the "Church," beating, kidnapping and imprisoning persons who wished to leave it, fraudulently procuring money by false claims regarding the benefits of Scientology training, the availability of refunds and the supposed accomplishments of Scientology's founder, international smuggling of currency, extortion of money, attempted (and perhaps actual) murder, training Scientologists to commit crimes, lying to government officials, the use of harassing and threatening phone calls, violation of polygraph laws, misuse of the legal system to harass individuals by deliberately filing meritless suits against them, spying upon and attempting to infiltrate the offices of opponents, failure to provide proper food or medical attention to children, and failure to educate them.[2]

C. The Provisions Of The Clearwater Ordinance

After the hearings the City determined to draft a registration and disclosure law to combat fraud and diversion of funds for illicit purposes by eleemosynary or-

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[2] The policies and practices disclosed by the Clearwater hearings have also been found to exist by courts here and abroad. See cases listed in the Appendix.

ganizations or groups holding themselves out as eleemosynary, including educational, philanthropic, health, benevolent, humane, religious and other organizations. Sections 100.01(1), 100.01(3), Pet. App. J6-J7, J8-J9. The ordinance enacted by the City requires that, if such an eleemosynary organization wishes to solicit funds in Clearwater, it must file a registration statement disclosing specified information. Section 100.03, Pet. App. J20-J27. The disclosure provisions are very similar or identical to those contained in hundreds of state and local registration and disclosure laws that have been in force for decades all over the country, and are almost precisely identical to those of a Houston ordinance attacked by a religious group but upheld as facially constitutional in a recent Fifth Circuit decision authored by Judge John Minor Wisdom. *International Society For Krishna Consciousness Inc. v. City of Houston*, 689 F.2d 541 (5th Cir. 1982). The ordinance requires a registering organization to maintain records of documents necessary to file the registration statement. Section 100.04, Pet. App. J36.

When an organization files a registration statement, the City Clerk *must* issue a Certificate of Registration unless required information is missing from the statement. Section 100.03(2), Pet. App. J28-J29. If the Clerk does not issue a Certificate, the organization can solicit in Clearwater without one unless and until a court upholds the City Clerk's decision. Section 100.03(3), Pet. App. J29-J30. The City bears the burden of initiating the court proceedings, and in the proceedings the organization can show the missing information should not be required because furnishing it would work a special hardship on the organization. Sections 100.03(3), 100.03(4), Pet. App. J29-J32.

For the convenience of charitable groups, the law contains exemptions for organizations whose collections in Clearwater are very small, allows a group to register by merely filing a registration statement already filed else-

where that contains information similar to data required by Clearwater, and permits a group not to file a public registration statement if it solicits only from its own members and provides necessary information in a "private statement" available to the members. Sections 100.02(1), 100.03(6), 100.02(3), Pet. App. J15-J16, J33-J34, J18-J20.

The ordinance provides that specified willful, knowing or fraudulent acts shall be unlawful (e.g., willful failure to file a registration statement, willful failure to make promised refunds, and misrepresentations to obtain money or property). Section 100.05, J39-J43. The City Attorney is empowered to investigate violations of the ordinance, but only if he first receives ten bona fide, sworn complaints setting forth facts showing a violation. Section 100.06(1), Pet. App. J45. In an investigation he can issue subpoenas, Section 100.06(2), J45-J47, but he has been given no power to enforce them and therefore must go to court for enforcement. He can prosecute if an investigation shows "probable cause" to believe a violation exists. Section 100.06(3), Pet. App. J47-J48.

D. The Procedural History Of The Case In The District Court

Clearwater initially adopted a registration and disclosure ordinance on October 6, 1983. *Church of Scientology Flag Service Org. Inc., et al. v. City of Clearwater, et al.*, 777 F.2d 598, 600 (11th Cir. 1985), Pet. App. A5. On January 23, 1984, the "Church" of Scientology filed suit seeking to have the ordinance enjoined. *Id.*, 777 F.2d at 600, Pet. App. A6. Its complaint raised a number of constitutional claims, *ibid.*, but the heart of its case was and remains that it allegedly is a religious group whose freedom of religion assertedly is being impaired in violation of the free exercise and establishment clauses of the First Amendment.

The district court set March 9, 1984—a date only one and one-half months after suit was filed—as the day of a so-called "final hearing" on Scientology's request for a permanent injunction. *Id.*, 777 F.2d at 601, Pet. App. A7. The hearing was confined to the facial validity of the ordinance. *Id.*, 777 F.2d at 601, Pet. App. A7-A8. No evidence was received except for a brief stipulation, between the "Church" and the City, that Clearwater is a Florida municipality, that the "Church" is a Florida corporation that sells books and pamphlets and pays some Scientologists commissions on funds they solicit, and that subject matter jurisdiction and venue were proper. *Id.*, 777 F.2d at 601, Pet. App. A8-A9. At the hearing the City's trial counsel advised the court that Clearwater would not challenge the "Church's" standing except as to claims based on the religion clauses. *Id.*, 777 F.2d at 601, Pet. App. A9.

Because of contentions made at the March 9th hearing, on March 15, 1984 the City enacted a new, amending ordinance that repealed all inconsistent parts of the previous law. *Id.*, 777 F.2d at 601, Pet. App. A10. The City promptly notified the court and the plaintiffs of the new law. *Id.*, 777 F.2d at 601, Pet. App. A11. Though the prior ordinance was no longer effective, on March 28, 1984 the district court issued a ruling that it was unconstitutional on its face and permanently enjoined its enforcement. *Id.*, 777 F.2d 601, Pet. App. A11-A12. Clearwater appealed this ruling to the Eleventh Circuit on grounds that the district court should not have ruled on the validity of the first ordinance after it was repealed. *Id.*, 777 F.2d at 602, 604-607, Pet. App. A15, A25-A40.

On May 24, 1984, the "Church" filed a supplemental suit attacking the new, amending ordinance on the same grounds raised in its suit against the first ordinance. *Id.*, 777 F.2d at 602, Pet. App. A17. The district court set July 13, 1984—again only one and one-half months

after suit was filed—as the day for a so-called "final hearing" on the "Church's" request for an injunction against the new ordinance. *Ibid.* On June 14, 1984, a month before the hearing, the City moved to dismiss the case. See *id.*, 777 F.2d at 602-603, Pet. App. A18.

At the July 13th hearing, the City's trial counsel said it would not contest Scientology's standing at that time. *Id.*, 777 F.2d at 603, Pet. App. A19. The district court said it would consider only the facial validity of the ordinance and took no evidence at the hearing. *Id.*, 777 F.2d at 603, Pet. App. A18-A19. At the conclusion of the hearing the court ruled that the ordinance was constitutional on its face. *Id.*, 777 F.2d at 603, Pet. App. A20. It subsequently entered written orders to that effect and granted leave for an interlocutory appeal under 28 U.S.C. § 1292(b). *Id.*, 777 F.2d at 603, Pet. App. A20-A21. Leave to appeal was similarly granted by an administrative panel of the Eleventh Circuit. *Id.*, 777 F.2d at 603, Pet. App. A21.

Because almost no evidence was received at the March 9, 1984 "final hearing" on the first ordinance, and no evidence at all was received at the July 13, 1984 "final hearing" on the amending ordinance, there are no record facts on issues that lie at the heart of the present case. There are no record facts on whether the "Church" of Scientology is a religion entitled to invoke the free exercise and establishment clauses of the First Amendment, as the "Church" contends, or is instead only a commercial and at times criminal organization not entitled to invoke the religion clauses, as the City contends. Nor are there record facts on whether, if Scientology *is* a religion, it would be heavily burdened by the disclosure requirements of the ordinance, as the "Church" contends, or could meet those requirements with little or no difficulty, as the City contends.[3] Finally, just as there are

[3] Clearwater's view received support in the Eleventh Circuit in an *amicus* brief filed by John J. O'Connor, who long was Vice

no record facts on these issues, neither are there district court findings on them.

E. The Decision Of The Eleventh Circuit

The Eleventh Circuit Court of Appeals issued an opinion on November 13, 1985. It vacated the district court's orders enjoining the first ordinance and instructed that the "Church's" suit against that ordinance be dismissed. *Church Of Scientology Flag Service Org., Inc., et al. v. City of Clearwater, et al., supra,* 777 F.2d at 604, 608, Pet. App. A27, A49. The Circuit held the trial court should not have ruled on the validity of the first ordinance after it had been repealed, since the suit over the first ordinance was then moot, and since the trial court's ruling violated this Court's policy against unnecessary decision of constitutional issues. *Id.,* 777 F.2d at 604-607, Pet. App. A26-A40. This holding of the Eleventh Circuit is not at issue here.

The Circuit also vacated the prior grants of leave to interlocutorily appeal the district court's decision that the second ordinance is constitutional; in this regard the

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President and General Counsel of the March of Dimes and has been actively involved in several umbrella organizations that oversee charitable giving. Mr. O'Connor said the type of information required by the Clearwater law is already required by the Internal Revenue Code and by the registration and disclosure laws of thirty-two states, is provided to the IRS and state governments by the March of Dimes, and is contained in the annual reports of at least a score of national charitable organizations with which he is personally familiar. *Brief Amicus Curiae of John J. O'Connor,* 6-7, 9-10. Mr. O'Connor stated that compliance with the disclosure requirements of the Clearwater ordinance "could not conceivably create an undue burden on charitable organizations soliciting funds for charitable purposes in the City of Clearwater. . . ." *Id.,* at 5. (For the convenience of the Court, three copies of Mr. O'Connor's brief have been lodged with the Clerk.)

appellate court held the case is not ripe for review. *Id.*, 607-608, Pet. App. A40-A46, A49. The Circuit said there is no record evidence on whether the "Church" had standing to bring its constitutional challenge and no factual findings on the question. *Id.*, 777 F.2d at 607, Pet. App. A41-A42; *see* 777 F.2d at 606, Pet. App. A35-A37. The district court, said the Circuit, should not have relied on any failure by Clearwater to contest Scientology's standing. *Ibid.* For standing is a matter of the case or controversy requirement of Article III, *id.*, 777 F.2d at 606, Pet. App. A37-A38, and the courts have a "constitutional obligation to ensure that the jurisdictional standing requirements were met." *Id.*, 777 F.2d at 607, Pet. App. A42-A43; *see* 777 F.2d at 606-607, Pet. App. A35-A40.

In addition, the Circuit felt "it would be unwise . . . to establish part of the law of the case at this time," because "[s]uch a decision could present difficulties for the district court and the parties beyond our ability to foresee as the case proceeds to a determination on the merits." *Id.*, 777 F.2d at 608, Pet. App. A45.

The Circuit felt its views require "special emphasis where a constitutional question is at issue." *Id.*, 777 F.2d at 608, Pet. App. 45-46. The Supreme Court's "deeply rooted doctrine" against unnecessary decision of constitutional questions, said the Circuit, "is particularly appropriate in this instance where no evidentiary or factual background is presented. . . ." *Id.*, 777 F.2d at 608, Pet. App. A46.

F. The Non Enforcement Of The Ordinance, And The Consequent Lack Of Any Threat Of Imminent Harm To Any Person

The Clearwater ordinance has not been enforced during the pendency of the litigation between Clearwater and the "Church," and will continue not to be enforced until an appropriate ruling on the merits in the trial court. Such a ruling would likely consist of a district

court decision upholding the ordinance after a full trial or other significant evidentiary proceedings.[4] Because the ordinance has not been enforced and will not be enforced until an appropriate decision, it has and continues to pose no threat of imminent harm to the "Church" or any other person.

The lack of enforcement has arisen from injunctions and decisions of City officials. When this litigation initially began, the "Church" requested a temporary restraining order against enforcement of the first ordinance. *Id.*, 777 F.2d at 600, Pet. App. A7. A TRO became unnecessary, however, because the City decided not to enforce the ordinance pending a final determination on its merits. *Id.*, 777 F.2d at 600-601, Pet. App. A7. Now, of course, the first ordinance has been repealed and *cannot* be enforced.

Because of the litigation, the City did not enforce the second ordinance between the date of its enactment, March 15, 1984, and the date the "Church" brought a supplementary suit against it, April 20, 1984. Thereafter, a temporary restraining order was in effect until July 23, 1984. *Id.*, 777 F.2d at 602, 603, Pet. App. A15-A16, A22-A23. On July 23d the district court, though it previously had upheld the facial validity of the law, enjoined enforcement of the provisions requiring registration and disclosure of information and maintenance of records. *Id.*, 777 F.2d at 603, Pet. App. A23-A24. Subsequently, when granting leave to appeal, an administrative panel of the Eleventh Circuit granted a motion to enjoin enforcement of the law pending decision on appeal. *Id.*, 777 F.2d at 604, Pet. App. A25. Though the latter

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[4] Continued lack of enforcement until a trial court decision assumes that this Court does not grant plenary review and uphold the ordinance. Were this Court to grant review and sustain the law, the City might then commence enforcement, depending on the extent of this Court's opinion.

injunction thereafter dissolved by its own terms when the Eleventh Circuit decided the case, the district court's July 13th injunction remains in effect. Thus, the registration, disclosure and recordkeeping provisions of the law are legally unenforceable at this time, and the City has determined that *no* part of the law will be enforced pending an appropriate decision in the trial court.

REASONS FOR DENYING THE WRIT

The Court of Appeals was correct in ruling this case is not ripe for decision. As indicated above, there are no record facts and no findings on whether Scientology is a religion, with consequent standing to invoke the freedom of religion clauses that the Court of Appeals correctly called "the heart" of Scientology's case. *Church of Scientology Flag Service Org. Inc., et al. v. City of Clearwater, et al., supra*, 777 F.2d at 606, Pet. App. A38. Nor are there record facts or findings on whether the Clearwater law would impose a significant burden on any group. Nor does the law present an imminent threat to any person. Finally, the Clearwater ordinance is consistent with numerous decisions of this Court and with the decision of the Fifth Circuit in the closely similar *City of Houston* case. In these circumstances, this case currently presents no issue of national importance, no conflict among circuits, no error, and no matter worthy of review by this Court.

I. The Case Is Not Ripe For Decision

This Court has pointed out that "issues of ripeness involve, at least in part, the existence of a live 'Case or Controversy'," as well as "judicial restraint from unnecessary decision of constitutional issues." *Blanchette v. Connecticut General Insurance Corps.*, 419 U.S. 102, 138 (1974). Thus, "the Court may delay resolution of constitutional questions" until a time "when a better factual record might be available," or until factual developments will put the Court in a "better position . . .

to confront the validity" of a statute. *Blanchette v. Connecticut General Corps., supra,* 419 U.S. at 143, 145. See also, *Duke Power Co. v. Carolina Environmental Study Group,* 438 U.S. 59, 82-83 (1978). The desirability of awaiting a better record is enhanced when a party will have "ample opportunity later to litigate . . . [the pertinent questions] after the factual record has matured." *Blanchette v. Connecticut General Insurance Corps., supra,* 419 U.S. at 146-147. Also, the Court will not decide a constitutional issue when a party is not "immediately threatened with harm," *Poe v. Ullman,* 367 U.S. 500, 503-504 (1961); or when a case is premature and abstract, *Rescue Army v. Municipal Court,* 331 U.S. 549, 574-575 (1947); or in " 'advance of the strictest necessity'." *Poe v. Ullman, supra,* 367 U.S. at 503; see also, *Sanks v. Georgia,* 401 U.S. 144, 151 (1971); *Rescue Army v. Municipal Court, supra,* 331 U.S. at 568.

These principles dictate that the instant case is not ripe for decision. Here there is no factual record and no findings on crucial issues. Such issues, in the words of the Eleventh Circuit, currently present only "abstract question[s] of law." *Church of Scientology Flag Service Org. Inc., et al. v. City of Clearwater, et al.,* 777 F.2d at 608, Pet. App. A44-A45. This Court will be in a much better position to confront the critical questions when there are record facts relating to whether the "Church" is a religious organization or only a commercial and sometimes a criminal one,[5] and to whether the disclosure requirements

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[5] Cf. *Alamo Foundation, et al. v. Secretary of Labor,* —— U.S. ——, 105 S.Ct. 1953 (1985). In *Alamo* a religious foundation urged that various of its activities were not covered by the Fair Labor Standards Act. The foundation unsuccessfully claimed in this regard that its businesses should not be considered to be ordinary commercial activities because they are "infused with a religious purpose" and are "vehicles for preaching and spreading the gospel to the public." *Id.*, —— U.S. at ——, 1055 S.Ct. at 1960. The lower courts, however, examined the activities to determine their true character, and this Court held those courts "were correct in

of the Clearwater law are easy to meet or burdensome. While the requisite factual record is being developed, neither the "Church" nor any other person will suffer harm, since the ordinance is not being enforced pending a suitable trial court decision. And the "Church" will have ample opportunity to litigate the crucial issues in the trial and appellate courts after development of a factual record.

The "Church" seeks to circumvent the lack of ripeness by urging that standing requirements are relaxed for facial challenges under the First Amendment. *Petition For Certiorari*, 10-14. Thus, says the "Church", a greatly reduced factual showing will suffice for standing here, a factual showing that is met by means of the allegations of the "Church's" complaint and stipulations assertedly entered by Clearwater. *Ibid.*

The "Church's" position is untenable. A party cannot *ipso facto* confer standing on itself by means of allegations in its complaint. Nor can standing or ripeness be conferred by stipulation or concession. Rather, this Court has taken pains to make clear that, because standing and ripeness are in part a matter of whether a judicially cognizable case or controversy exists under Article III, a federal court must independently satisfy itself that standing exists and that a case is ripe, and must do so regardless of any concessions or stipulations. *Secretary of State of Maryland v. Munson*, —— U.S. ——, —— n.4, 104 S.Ct. 2839, 2846 n.4; *Kremens v. Bartley*, 431 U.S. 119, 135-136 (1977); *Juidice v. Vail*, 430 U.S. 327, 331 (1977); *Blanchette v. Connecticut General Insurance Corps., supra*, 419 U.S. at 356; *Doremus v. Board of Edu-*

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scrutinizing the activities at issue by reference to objectively ascertainable facts concerning their nature and scope." *Id.*, —— U.S. at ——, 105 S.Ct. at 1960-1961. In the present case Scientology's actions must likewise be "scrutiniz[ed] . . . by reference to objectively ascertainable facts" in order to determine the true character of the actions.

cation, 342 U.S. 394, 397 (1952). Independent judicial examination and decision are also required because considerations of judicial restraint come into play. *Blanchette v. Connecticut General Insurance Corps., supra*, 419 U.S. at 138.[6]

The principles that make the "Church's" position untenable have been strongly reiterated by this Court as recently as March 25, 1986 in a case involving freedom of religion and speech. *Bender, et al. v. Williamsport Area School District, et al.*, No. 84-773, decided March 25, 1986, 54 L.W. 4307. In *Bender*, no one had raised any question in the Third Circuit regarding a school board member's standing to appeal. *Id.*, 54 L.W. at 4308. However, this Court vacated the Circuit's judgment and ordered dismissal of the appeal because of lack of standing. *Id.*, 54 L.W. at 4310.

In words that parallel the decision of the Eleventh Circuit in the present case, the Court in *Bender* said "every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it. . . . And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it." *Id.*, 54 L.W. at 4308.

Again paralleling the views of the Eleventh Circuit, the Court went on to emphasize that "[t]his obligation to

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[6] In addition to arguing that standing has been conferred by stipulation, the "Church," relying on *Larson v. Valente*, 456 U.S. 228 (1982), argues that Clearwater cannot apply its ordinance to Scientology, yet simultaneously deny that Scientology is a bona fide religion with standing to invoke the free exercise and establishment clauses. *Petition For Certiorari*, 11-12. The argument is erroneous. Here, unlike *Larson v. Valente*, the relevant provisions of the ordinance apply not only to bona fide religious groups, but to groups that *hold themselves out* as religions. The ordinance is therefore applicable to a group which falsely claims to be but in fact is not a religion, and which therefore lacks standing to invoke the religion clauses.

notice defects in a court of appeals' subject-matter jurisdiction assumes a special importance when a constitutional question is presented. In such cases we have strictly adhered to the standing requirements to ensure that our deliberations will have the benefit of . . . a full development of the relevant facts." *Id.*, at 4308-4309. In this regard, the Court stressed that it had "frequently recognized the importance of the facts and the factfinding process in constitutional adjudication," and that " '[i]t is the typical, not the rare, case in which constitutional claims turn upon the resolution of contested factual issues.' " *Id.*, 54 L.W. at 4309 n.5. The Court pointed out that "[T]he legal questions presented to the court [should] be resolved not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.' " *Id.*, 54 L.W. at 4309.

The facts essential to a determination of standing, repeatedly said the Court, "must affirmatively appear in the record." *Id.*, 54 L.W. at 4310. "Moreover, because it is not 'sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings,' . . . it follows that the necessary factual predicate may not be gleaned from the briefs and arguments themselves." *Ibid.*

The decision in *Bender* thus confirms that the present case is inappropriate for review at this time. For *Bender* stresses the need for a full development of the facts, a need for record facts regarding standing, and the impermissibility of relying on concessions concerning standing. But here there has been no significant development of the facts, there are almost no record facts at all regarding standing, and there is only an alleged concession concerning it.

Finally, even if standing could be conferred merely by a complaint and stipulation, this case still would not be ripe because there are no record facts and no findings on

the additional issue of whether the ordinance imposes a significant burden on petitioner or any other group.[7]

II. The Clearwater Ordinance Comports With Decisions Of This Court

Review also is unwarranted because, even if Scientology were a religion, the Clearwater ordinance is consistent with long established principles enunciated by this Court.

A. *Government Can Prohibit And Punish Crime And Antisocial Conduct Even When Committed In The Name Of Religion*

As discussed above, the Clearwater ordinance was enacted because extensive legislative hearings revealed that criminal and antisocial conduct, including extensive fraud, were being perpetrated on a vast scale by the "Church." This Court and lower federal courts have held for over one hundred years that government has power to and a compelling interest in acting against such conduct even when committed in the name of religion. "Crime," this Court has said, "is not the less odious because sanctioned by what any particular sect may designate as religion."

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[7] This Court's prominent cases on the facial validity of statutes and ordinances have usually had highly developed factual records. Several of the cases came to the Court after a trial—often an extensive trial—on the merits. E.g., *Kolender v. Lawson*, 461 U.S. 352, —— n.2, 103 S.Ct. 1855, 1856 n.2 (1983); *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 493 (1982); *Bigelow v. Virginia*, 421 U.S. 809, 813-814 (1975); *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 553 (1973); *Grayned v. City of Rockford*, 408 U.S. 104, 105 (1972); *Gooding v. Wilson*, 405 U.S. 518, 519 (1972); *see, Broadrick v. Oklahoma*, 413 U.S. 601, 603 (1973). Others of the cases came to the Court after motions for summary judgment supported by evidence which was sometimes obtained through discovery. E.g., *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, —— U.S. ——, ——, 104 S.Ct. 2118, 2123 (1984); *Larson v. Valente*, 456 U.S. 228, 234 (1982). Thus, petitioner's implication that a factual record has been thought unnecessary is belied by the cases themselves.

Davis v. Beason, 133 U.S. 333, 345 (1980). "However free the exercise of religion may be, it must be subordinate to the criminal laws of the country. . . ." *Id.* at 342-343. Otherwise, "the professed doctrines of religious belief [would be] superior to the law of the land," and the result would be "to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." *Reynolds v. United States*, 98 U.S. 145, 167 (1878).

The principles established in *Davis* and *Reynolds* have been followed ever since. Accordingly, this Court and other tribunals have often stressed that activities, "even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety and general welfare." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). " 'The State may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.' " *Bob Jones University v. United States*, 461 U.S. 574, 603 (1983). For these reasons, numerous actions that violate civil or criminal laws can be prohibited or punished though based upon or demanded by religion. Polygamy can be banned. *Reynolds v. United States, supra*; *Davis v. Beason, supra.* Child labor can be barred. *Prince v. Massachusetts*, 321 U.S. 158 (1944). Nonpayment of taxes can be precluded and punished. *United States v. Lee*, 455 U.S. 252 (1982); *United States v. Moon*, 718 F.2d 1210 (2d Cir. 1983), *cert. den.*, —— U.S. ——, 104 S.Ct. 2344 (1984). Racial discrimination can be disadvantaged by denial of tax exemptions. *Bob Jones University v. United States, supra.* The use of marijuana, LSD and peyote can be punished, *United States v. Kuch*, 288 F. Supp. 439 (D.D.C. 1968); *State v. Ballard*, 148 S.E. 2d 565 (N.C. 1966), *cert. den.*, 386 U.S. 917 (1967). Parents can be punished for failing to provide children with necessary medical attention. *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903). The use of poisonous snakes in religious services can be forbidden.

Harden v. State, 216 S.E. 2d 708 (Tenn. 1948). Violations of zoning laws can be prohibited. *Grosz v. City of Miami Beach*, 721 F.2d 729 (11th Cir. 1983), *cert. den.*, —— U.S. ——, 105 S.Ct. 108 (1984); *Lakewood, Ohio Cong. of Jehovah's Witnesses, Inc. v. City of Lakewood*, 699 F.2d 303 (6th Cir. 1983), *cert. den.*, —— U.S. ——, 104 S.Ct. 72 (1983). And the marketing of wheat in excess of quotas can be barred. *United States v. Kissinger*, 250 F.2d 940 (3rd Cir. 1958), *cert. den.*, 356 U.S. 956 (1958).

Also among the actions which can be prohibited and punished are fraud and other crimes committed in connection with the solicitation of funds by religious and other charitable groups. *Secretary of State of Maryland v. Munson, supra*, —— U.S. at —— n.9, 104 S.Ct. at 2850 n.9; *Larson v. Valente, supra*, 456 U.S. at 248; *Village of Schaumburg v. Citizens for a Better Environment, supra*, 444 U.S. at 637-638; *Hynes v. Mayor and City Council of Borough of Oradell*, 425 U.S. 610, 618-619 (1976); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *United States v. Rasheed*, 663 F.2d 843 (9th Cir. 1981), *cert. den.*, 454 U.S. 1157 (1982); *International Society for Krishna Consciousness v. Barber*, 650 F.2d 430 (2d Cir. 1981). Indeed, in the last six years this Court has twice pointed out that penal laws and disclosure laws can be used to stop fraud by eleemosynary organizations. *Village of Schaumburg v. Citizens for a Better Environment, supra*, 444 U.S. at 637-638; *Secretary of State of Maryland v. Munson, supra*, —— U.S. at —— n.9, 104 S.Ct. at 2850 n.9. As the Court said in *Schaumburg*, 444 U.S. at 637-638:

> Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly. Efforts to promote disclosure of the finances of charitable organizations also may assist in preventing fraud by informing the public of the ways in which their contributions will be employed. Such measures may help make contribution decisions more informed,

while leaving to individual choice the decision whether to contribute. . . ." (Citations and footnotes omitted.)

Furthermore, when a religious organization recently attacked a Houston ordinance containing disclosure provisions nearly identical to the Clearwater law, the Fifth Circuit upheld the Houston law as constitutional on its face. *International Society for Krishna Consciousness v. City of Houston, supra.* The Fifth Circuit pointed out that this Court has said a municipality's interest in "protecting the public from 'fraud [and] crime . . .'" perpetrated by charitable solicitors is " 'substantial,' " 689 F.2d at 550, see *id.*, 549 n.6, and has also said, as quoted above, that " 'Efforts to promote disclosure of finances of charitable organizations also may assist in preventing fraud by informing the public.' " *Id.* at 550.

Thus Clearwater's registration and disclosure law, aimed at fraud and other abuses committed in connection with solicitation, is supported by a long line of precedents under which government can act against conduct that violates criminal and civil laws.

B. *It Is Erroneous To Argue That Crime And Antisocial Conduct Are Immune From Regulation Because Government Lacks Power To Affect The Relationship Between A Church And Its Members Or To Require Information From Hierarchical Religions*

The "Church" seeks to evade governmental power to prevent criminal and antisocial conduct by arguing that government cannot in any way affect the relationship between a church and its members. *Petition For Certiorari*, 14-17. The argument is incorrect in law and is significantly inapplicable on the facts.

It is erroneous in law because, if government could not preclude illicit conduct occurring as part of the relationship between a church and its members, the result "would be to make the professed doctrines of religious belief su-

perior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Reynolds v. United States, supra*, 98 U.S. at 167 (quoted in *Davis v. Beason, supra*, 133 U.S. at 344). Thus, a large number of the cases holding that government can bar and punish antisocial conduct based on religion have solely or extensively involved the relationship between a church and its members. This was true of cases involving polygamy, child labor, fraud against members of a religion, the use of hallucinagenic drugs, failure to give medical attention to children, non-payment of taxes on grounds that payment violated tenets of a religion, and the use of deadly snakes at religious services.

The argument is significantly inapplicable on the facts because the "Church" deals extensively with members of the public. The "Church" advertises to members of the public, tries to obtain money from them, and seeks to entice them into its "training" programs.

The "Church" also seeks to evade governmental power to stop crime by urging that government cannot require information from a hierarchically structured church that does not impart data to members. *Petition For Certiorari*, 16-17. This argument, too, is flawed. As discussed *infra*, in order to deter and punish crime and abuse, including fraud, government can and regularly does require religious organizations to disclose information regardless of the organizations' structure. If government could *not* require information from hierarchically structured groups, then such groups would be above the law and could commit fraud and other crimes with impunity.[8]

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[8] Cases cited by the "Church" in support of its argument that government cannot require information from hierarchical groups (e.g., *Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich*, 426 U.S. 696 (1976)), did not involve criminal or antisocial conduct, and this Court has never said the state must defer to hierarchical decisions requiring such conduct. The Court's opinions have been to the contrary.

III. The Ordinance Does Not Require Unusual Amounts Of Information. Also, It Is Not Vague Or Overbroad And Does Not Repose Arbitrary Power In City Officials

In an additional effort to evade governmental power to deter criminal and antisocial conduct, the "Church" claims the Clearwater ordinance requires charitable groups to gather, maintain and disclose "enormous" amounts of information (*Petition For Certiorari*, 17) and further claims the ordinance is vague, overbroad and lodges unlawful discretion in city officials. *Id.*, 3-4, 17-18, 19. The "Church's" claims are erroneous.

A. The provisions of the Clearwater ordinance do not require unusual or particularly heavy amounts of information. Rather, the disclosure requirements of the law—and thus the data that must be gathered and maintained—are similar or identical to the requirements of a host of state and local laws that have been in force around the country for decades and have long been met by charitable groups. Accordingly, in the Eleventh Circuit Clearwater cited ten state statutes that require amounts of information similar to or identical with that demanded by Clearwater,[9] lodged with the court four local ordinances that do the same,[10] and cited eleven other state statutes requiring information of the type required by Clearwater.[11]

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[9] Conn. Gen. Stat. Ann. § 21a-177 (West Supp. 1983); Ill. Ann. Stat. Ch. 23, §§ 5102, 5104 (Smith-Hurd); Kan. Stat. §§ 17-1740, 17-1742; Me. Rev. Stat. tit. 9, §§ 5004, 5005; Mass. Ann. Laws, Ch. 68, § 19 (Michie/Law Co-op); N.C. Gen. Stat. § 131C-7 (1983 Supp.); N.D. Cent. Code §§ 50-22-03, 50-22-04; Pa. Stat. Ann. tit. 10, § 160-3 (Purdon); R.I. Gen. Laws § 5-53-2 (Supp. 1984); Va. Code § 57-49.

[10] The ordinances were those of Dallas, Texas, Los Angeles, California, Alexandria, Virginia and Jacksonville, Florida.

[11] Ark. Stat. Ann. §§ 64-1602, 64-1603; Ga. Code Ann. §§ 43-17-2, 43-17-4; Haw. Rev. Stat. § 467B-2; Md. Ann. Code Art. 41, § 103B; Mich. Comp. Laws Ann. §§ 400.273, 400.284; Minn. Stat. Ann. §§ 309.52, 309.53; Okla. Stat. Ann. tit. 18, §§ 552.3, 552.5 (West);

Furthermore, the disclosure requirements of the Clearwater law are virtually identical to those the Fifth Circuit recently upheld against facial attack by a religious group in the *City of Houston* case, *supra*. Also, the Internal Revenue Code requires charitable groups to maintain and disclose information as or far more extensive than required by Clearwater, 26 U.S.C. 6033(a)(1); 26 C.F.R. 1.600-1(a) and (c); and federal tax cases have required religious groups to disclose vast amounts of information. *United States v. Coates*, 692 F.2d 629 (9th Cir. 1982); *United States v. Dykema*, 666 F.2d 1096 (7th Cir. 1981), *cert. den.*, 456 U.S. 983 (1982); *United States v. The Freedom Church*, 613 F.2d 316 (1st Cir. 1979).

Finally, far from requiring "enormous" and burdensome amounts of information, the disclosure requirements of the Clearwater ordinance are easily met. This was shown by example at pages 72-76 of Clearwater's Eleventh Circuit brief. Three copies of the brief have been lodged with the Clerk in case this Court should wish to see how simply the disclosure provisions can be satisfied.

For all the above reasons, the amount of information required by Clearwater is plainly permissible.

B. The Clearwater ordinance is not vague or overbroad and does not vest unconstitutional discretion in officials. Rather, it satisfies the "practical criterion of fair notice," *American Association v. Douds*, 339 U.S. 382, 412 (1950); and "does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, *supra*, 461 U.S. at 357. All this is emphasized by the fact that its disclosure provisions are very similar or identical to those of numerous disclosure laws that have been enforced and met for decades, are nearly identical to those

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Ohio, Rev. Code Ann. §§ 1716.02, 1716.04 (Page); N.J. Stat. Ann. §§ 45:17A-4, 45:17A-6 (West); N.Y. Exec. Law §§ 172, 172-b (McKinney); W. Va. Code § 29-19-5.

specifically upheld against vagueness and overbreadth attacks in the *City of Houston* case, *supra*, and can be easily complied with. Also, directly contrary to the "Church's" spurious claim that the City Clerk has arbitrary discretion to deny a Certificate of Registration "'for any reason'," *Petition for Certiorari*, 19, the ordinance specifically requires that the Clerk *must* issue a Certificate unless required information has not been provided.

Finally, and contrary to the "Church's" false argument that the City Attorney has unfettered and arbitrary discretion, *id.*, 19-20, the ordinance, using standard legal terminology, precludes him from investigating unless he receives ten "bona fide" sworn complaints setting forth facts showing a violation, gives him no power to enforce subpoenas and thus makes it necessary for him to go to court for enforcement, and precludes him from instituting a prosecution unless investigation shows "probable cause" to believe a violation exists.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

JUDICIAL DECISIONS PROVIDING INFORMATION ON ACTIONS AND POLICIES OF THE "CHURCH" OF SCIENTOLOGY

1. *United States v. Heldt, et al.*, 668 F.2d 1238 (D.C. Cir. 1981), *cert. den.*, 456 U.S. 926 (1982).

2. *Church of Scientology of California v. Richardson*, 437 F.2d 214 (9th Cir. 1971).

3. *Wakefield v. The Church of Scientology of California*, No. 82-313 CIV-T-10, decided February 11, 1986, D.M.D. Fla.

4. *Church of Scientology of Minnesota v. Dept. of H.E.W.*, 341 F. Supp. 563 (D. Minn. 1971), *aff'd*, 459 F.2d 1044 (8th Cir. 1972).

5. *United States v. Article Or Device, Etc.*, 333 F. Supp. 357 (D.D.C. 1971).

6. *Church of Scientology of California v. Commissioner*, 83 T.C. No. 25 (September 24, 1984).

7. *Church of Scientology of California v. Armstrong*, No. C 420153, Cal. Super. Ct., June 20, 1984.

8. Re: *B and G (Wards)*, Eng. Royal Cts. of Justice, High Court of Justice, 1984 (Latey, J.), appeal dismissed, *re "B" and "G" (Minors)*, Supreme Court of Judicature, Court of Appeal, September 19, 1984.